

EXPLANATORY MEMORANDUM TO

The Sea Fishing (Enforcement of Community Control Measures) (Amendment) Order 2009

2009 No. 1847

1. This explanatory memorandum has been prepared by Defra and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 To provide for the enforcement of Council Regulation (EC) No 1966/2006 on electronic recording and reporting of fishing activities and on means of remote sensing and Commission Regulation (EC) No 1077/2008 laying down detailed rules for the implementation of Council Regulation (EC) No 1966/2006 and repealing Regulation (EC) No 1566/2007 in relation to the requirement to submit sales notes and take-over declarations electronically. This Order amends the Sea Fishing (Enforcement of Community Control Measures) Order 2000 in relation to England only.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative Context

4.1 This instrument implements new European obligations to record and submit sales note data electronically for businesses whose turnover in first sale fish exceeds the specified threshold of €400,000. Current EC obligations under Council Regulation (EEC) No. 2847/93 establishing a control system applicable to the common fisheries policy require the submission of 'sales notes' for all sales, but do not specify the means for recording and submitting the data.

5. Territorial Extent and Application

5.1 This instrument applies to England only.

6. European Convention on Human Rights

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

- *What is being done and why*

7.1 Information on fisheries activities is currently collected through paper recording in a logbook and sales note record. Implementation of electronic recording and submission of this information will provide better controls for cross-checking of logbook data, will increase the accuracy of data held and will reduce the administrative burdens of those businesses affected arising from the submission of paper sales notes under the current requirements.

There are currently estimated to be just 50 businesses in England who will be legally required to use the electronic system and therefore comply with the new requirements. A further 30 businesses have opted to use electronic recording of sales note data on a voluntary basis.

- **Consolidation**

7.2 Consolidation of the original instrument was considered but as a proposal for new EU Control Regulations is currently under consideration by Member States which will mean the drafting of a new instrument when agreed, it was decided to amend the existing instrument at this stage.

8. Consultation outcome

8.1 See section 3 of the IA for full details but between 2005 and 2007 three consultations or stakeholder engagement papers were distributed to those affected. No specific comments on the proposals for the introduction of electronic sales notes were received except general reservations on the use of such systems and compatibility with existing software systems.

9. Guidance

9.1 Guidelines will be produced for Inspectors and required training will be provided. Plain English guidance notes have been prepared for the registered buyers and sellers setting out the requirements of this Regulation and how to use their chosen means of recording and submitting sales notes which will be circulated four weeks before implementation of the live system.

10. Impact

10.1 Whilst there may be some initial one off costs involved in making changes to existing systems for some registered buyers and sellers, there is a significant reduction in administrative burdens arising from the implementation of electronic recording and submission of sales notes to both business and public sector. By using the electronic system the information held by the Fisheries Administrations will be more accessible and require less effort to submit the paper sales notes. There will also be an improvement of the quality of data held from less keying errors. Details of those estimated costs and benefits are set out in the Impact Assessment attached to this memorandum.

11. Regulating small business

11.1 The legislation applies to *all relevant* small business.

12. Monitoring & review

12.1 A review of the scheme and the instrument will be undertaken within three years of the scheme being implemented to ensure it is operating in a reasonable and proportionate manner.

13. Contact

Julie Fitton at the Department for Environment, Food & Rural Affairs Tel: 0207 238 4435 or email: Julie.fitton@defra.gsi.gov.uk can answer any queries regarding the instrument.

Summary: Intervention & Options

Department /Agency: Department for Environment Food and Rural Affairs	Title: Impact Assessment of : Introduction of Electronic Recording and Reporting of Fishing Activities and on means of Remote Sensing – Electronic Sales Notes and takeover declaration	
Stage: Final	Version: 1	Date: February 2009
Related Publications: Council Regulation (EC) No 1966/2006 & Commission Regulation 1077/2008		

Available to view or download at:

<http://www>.

Contact for enquiries: Julie Fitton

Telephone: 020 7238 4435

What is the problem under consideration? Why is government intervention necessary?

Information on fisheries activities is currently collected through paper recording in a logbook and sales note records. This is time consuming for those completing the paper forms and resource intensive for MFA which has to enter the data onto its database. By using the latest IT solutions this will ensure a timely collection of data and an increased accuracy with the ability to auto cross check. Government intervention is necessary to ensure a consistent and compatible system for compiling data is adopted. Non-implementation of the EU requirement could leave the UK open to infraction procedures by the Commission. The likelihood of this risk being realised is high, since the Commission is taking a close interest in the implementation of fisheries enforcement requirements by member states.

What are the policy objectives and the intended effects?

Implementation of electronic recording and submission of take-over declarations and sales notes (this only applies to registered buyers and sellers with an annual turnover in fishery products of at least euro 400k approx £360k).

This will provide better controls for cross-checking of data, will increase the accuracy of data held and will reduce the administrative burdens arising from the submission of paper sales notes under the previous requirements. It will also ensure proper application of EU law and thereby avoid infraction proceedings.

What policy options have been considered? Please justify any preferred option.

Two options have been considered. 1. Do nothing; 2. Implementation in full requiring registered buyers and sellers of first sale fish whose annual turnover in such sales is above the Euro 400k threshold to record and submit electronically take-over declarations and sales notes along with registered buyers and sellers below the threshold who want to opt into the system on a voluntary basis. They will record and transmit sales note and takeover declaration electronically using one of a choice of means provided by the Fisheries Administration.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?

Defra will carry out a review 2-3 years after implementation

Ministerial Sign-off For final stage Impact Assessments:

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Minister:

+ Huw Irranca-Davies

2nd July 2009

.....Date:

Summary: Analysis & Evidence

Policy Option: 2

Description: Electronic recording and submission of sales notes

COSTS	ANNUAL COSTS		Description and scale of key monetised costs by 'main affected groups' One off costs to industry of training and familiarisation with new system of £966; One off Capital costs of developing an IT system of £131k; Annual running costs of communication hub of £24k; Additional MFA management resource required of £34k annually	
	One-off (Transition)	Yrs		
	£ 131,966			
	Average Annual Cost (excluding one-off)			
	£58,000		Total Cost (PV)	£ 1,014,286
Other key non-monetised costs by 'main affected groups' One off costs to Government to provide support during the start up phase of the new system;				

BENEFITS	ANNUAL BENEFITS		Description and scale of key monetised benefits by 'main affected groups' Annual time savings for industry in submitting notes electronically of £104,190 (assumed to be realised after 1 year of the new process being implemented); annual time savings to government from the new electronic system of £84,588 (assumed to be realised after 1 year of the new process being implemented);	
	One-off	Yrs		
	£ 0			
	Average Annual Benefit (excluding one-off)			
	£ 188,788		Total Benefit (PV)	£ 2,682,989
Other key non-monetised benefits by 'main affected groups' Electronic access to Government records of their sales and purchases of first sale fish. Less keying errors when transposing handwritten sales note into Government databases.				

Key Assumptions/Sensitivities/Risks

That all businesses have existing IT equipment and internet connections as part of normal business practice. PV is calculated over 20 years at a discount rate of 3.5%

Price Base Year 2009	Time Period Years 20	Net Benefit Range (NPV) £ -	NET BENEFIT (NPV Best estimate) £ 1,668,703
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What is the geographic coverage of the policy/option?			England		
On what date will the policy be implemented?			From 01/03/09		
Which organisation(s) will enforce the policy?			MFA		
What is the total annual cost of enforcement for these organisations?			£ 0		
Does enforcement comply with Hampton principles?			Yes		
Will implementation go beyond minimum EU requirements?			No		
What is the value of the proposed offsetting measure per year?			£ n/a		
What is the value of changes in greenhouse gas emissions?			£ n/a		
Will the proposal have a significant impact on competition?			No		
Annual cost (£-£) per organisation (excluding one-off)		Micro	Small	Medium	Large
Are any of these organisations exempt?		No	No	N/A	N/A

Impact on Admin Burdens Baseline (2005 Prices) ¹			(Decrease)		
Increase of	£ 0	Decrease of	£ 98,487	Net Impact	£ 98,487

¹ Calculated using the latest GDP Deflator at Market Prices (http://www.hm-treasury.gov.uk/data_gdp_fig.htm) where 2007-08 = 100, 2005-06 = 94.526

Evidence Base (for summary sheets)

1. These Regulations transpose the provisions of:

- Article 1(3) of Council Regulation 1966/2006 on electronic recording and reporting of fishing activities and on means of remote sensing;
- Article 5 of Commission Regulation 1077/2008 establishing detailed rules for the implementation of the above Council Regulation.

Background

Council Regulation 2371/2002 establishes the framework designed to ensure the conservation and the sustainable exploitation of fisheries resources under the Common Fisheries Policy (CFP). Council Regulation 1966/2006 of 21 December 2006 on electronic recording and reporting of fishing activities and on means of remote sensing places obligations on Member States to electronically record and transmit

- sales note information (as detailed in Article 9 of the Control Regulation (2847/93)) for those registered buyers and sellers of first sale fish whose income from such sale were above a certain threshold (€400K per annum), hereafter referred to as e-sales notes, and;
- records of fishing activity (Logbook information) for vessels over 15m in length (as detailed in Art 6 of the Control Regulation (2847/93)) and the detailed rules as set down in Commission Regulation 2807/83 as amended).

Council Regulation 1966/2006 also placed an obligation on Member States to possess the technical capacity allowing them to match the positions derived by remotely sensed images with the data received by the vessel monitoring system (satellite monitoring) in order to assess the presence of fishing vessels in a given area.

This impact assessment covers the introduction of electronic sales notes only. The other aspects (introduction of electronic logbooks and remote sensing) will be assessed in a separate IA.

2. Rationale for Government Intervention

The EU requires all businesses involved in the first sale of fish with a turnover above €400K per annum to record and report their purchases and sales using electronic means. The introduction of electronic sales notes requires Government intervention to ensure a compatible and consistent approach is adopted. Using a totally voluntary scheme would not guarantee that such businesses would comply with the requirement. The scheme will also improve the accuracy of the information gathered due to less human intervention in the process.

3. Consultation

Within Government

Discussions between UK Fisheries Administrations have continued throughout 2007 and 2008. A small working group of representatives from each administration was set up to look closely at the detail and technical aspects of this Regulation and to steer the implementation of the detailed rules for e-sales notes in the UK.

Public Consultation

A copy of the Commission's original proposal was sent to interested organisations on 7 April 2005 requesting comments on the proposal. Seven responses were received to that consultation. Further stakeholder engagement papers were sent out in May 2006 and July 2007 to all over 10 metre fishing vessel licence holders and registered buyers and sellers of first sale fish alerting them to the proposal and the implications to those businesses affected.

The main points of concern raised by stakeholders were the additional costs of the new technology for what is felt to be an enforcement tool and also the availability of suitable

equipment. No specific comments on the proposals for the introduction of electronic sales notes were received except general reservations on the use of such systems and compatibility with existing software systems.

Progress to date

Further stakeholder engagement papers were sent out in July 2007 enclosing the draft detailed rules for implementing the Regulation with further updates being sent out following the publication of the detailed rules in February 2008.

Following receipt of the detailed rules implementing the Regulation, Fisheries Administrations wrote out (7 April 2005, 8 May 2006 and 2 July 2007) to all over 10 metre fishing vessel licence holders and registered buyers and sellers of first sale fish alerting them to the proposal.

4. Options

Two options have been identified for this proposal:

Option 1

Do nothing. Continue to apply existing arrangements as set out in Commission Regulation 2847/93, which requires the registered buyers and sellers to submit paper copies of sale note information within 48 hours of sale or purchase of fish. This would make no improvement to the timeliness or accuracy of the data provided nor would costs to industry and Government be reduced.

Option 2

Implement the proposal in full. This would require the information contained in sales notes and takeover declarations to be completed and submitted electronically by those involved in the sale of first sale fish (with an annual turnover in fishery products of €400,000, (approx £360k)).

Electronic sales notes and takeover declarations

Registered buyers and sellers of first sale fish with an annual turnover in fisheries products that are above the stated threshold are required to record and submit sales note information electronically. We also propose to allow those registered buyers and sellers below this threshold to take advantage of the system and opt in on a voluntary basis. Where fish products are landed but held for sale at a later date, the holder of the fish must complete a takeover declaration which provides almost the same information as a sales note, but without information on the price paid.

There are 5 options for recording and submission of data for registered buyers and sellers:

For those who already have electronic databases containing sales note information on first sale of fish

→ UK Fisheries Administrations will enable their records of sales at auction or purchases direct from fishing vessels to be sent to Defra via email using a supplied file format e.g. CSV (Comma Separated Values) or;

→ on-line data entry of multiple sales notes using an excel spreadsheet.

For those businesses and individuals without such database records

→ a web-based system will be available to record, submit and view information on their sales;

→ on-line data entry for single sale note submission;

→ off-line data entry and submission of information via email.

The submission of a takeover declaration is rare – none were received by UK Fisheries Administrations in 2008. Also the holder of the fish may not be a registered buyer or seller of first sale fish. It was therefore decided that all takeover declarations should be recorded and

submitted using the web-based system as it will not require the person making the declaration to be a registered buyer or seller of first sale fish but would allow the registration details of a registered buyer and seller that wished to make such a declaration to be used to populate the information.

5. Costs and benefits

Sectors and groups affected

Businesses affected by the new measures will be registered sellers of first sale fish at auction and registered buyers who purchase fish direct from fishing vessels whose annual turnover in first sale fisheries products is above the stated threshold. These include large processors, fish merchants, restaurateurs and hoteliers. There will also be an impact for the MFA.

Option 1 – do nothing

Costs

Continuing to apply the existing arrangements and allow all registered buyers and sellers to continue to submit paper sales notes will not result in any additional costs.

Sales notes are currently submitted directly to the MFA at each of its 18 coastal offices in England. Most of these sales notes are in paper form and staff are employed to, amongst other things, input the data directly into the data systems. They also deal with fishermen and buyers and sellers directly, resolving data errors and chasing up data which has shown to be missing from cross checking information and data from other sources.

However, there is a risk that non-implementation of this EU requirement could leave the UK open to infraction proceedings by the Commission. The likelihood of this risk being realised is high, since the Commission is taking a close interest in the Implementation of fisheries Enforcement requirements by Member States following criticism by the European Court of Auditors of Commission and Member States controls under the CFP.

Benefits

There are no additional benefits from continuing with the status quo.

Option 2 – Implement the regulation

There are currently some 600 buyers and sellers of first sale fish registered with Defra. Of those 58 are above the Regulation threshold of 400,000 Euros annually (based on the turnover recorded on sales notes received in 2008) and will be required to submit sales notes electronically. A further 22 businesses have indicated that they wish to opt in to use the electronic system. So in total 80 firms will be impacted by this change in regulation. Whilst there may be a small fluctuation in the numbers of businesses required to use the electronic system, we believe the majority of business are already included in the scheme.

Costs

There is likely to be a cost of training and familiarisation for businesses with the new system which we have assumed will take firms approximately 1hour each.

Using the Standard Cost Model we can calculate the cost of training and familiarisation with the new system:

Training and Familiarisation Cost = Number of business affected x time taken x hourly wage rate

Therefore, = £966.40

Where:

Number of businesses affected = 80

Time taken = 1 hour

Hourly Wage = $\pounds 9.29^2 \times 1.3^3 = \pounds 12.08$

Fisheries Departments

There will also be initial start up costs to port staff working for the MFA who will be required to provide support at a local level to buyers and sellers affected by this change. This will take the form of familiarisation as well as correcting keying errors etc. which are anticipated in the early days of E-sales notes.

Once an E-sales note is submitted, it will continue to require some management from port offices such as manual linking to logbooks and cross check validation before the details of the note are finalised.

It is estimated that an additional resource equivalent to 1 EO grade at a cost of $\pounds 34,863^4$ within MFA head quarters will be required to manage the Electronic Reporting System website content and the holding area where records cannot yet be passed in to the English Fisheries Administration database FAD. It is also anticipated that MFA headquarters will become the main enquiry point for E-sales matters.

The total Capital costs of developing an IT system (communication hub) to allow the recording and submission of sales note information from registered buyers and sellers and to provide automated cross-checking of this data with other fisheries information (logbook, landing declaration and VMS) will be around $\pounds 327K$ as set out in the contract with the chosen service provider. 40% of those costs will be met by England ($\pounds 131K$) as the remaining 60% will be shared between Scotland (40% = $\pounds 131k$), Northern Ireland (15% = $\pounds 49k$) and Wales (5% = $\pounds 16K$) on an agreed (based on the numbers of buyers and sellers and vessels subject to the requirement to have an electronic logbook etc). Once the communication hub is completed the 40% Defra share of the annual running costs according to the contract between the service provider and the Secretary of State for Environment, Food and Rural Affairs, will be $\pounds 24K$. The total annual fee for operational support and communications being $\pounds 60K$.

Benefits

In 2008 almost 69,000 sales notes were submitted to the MFA by firms over the financial threshold and by firms who have indicated that they will likely opt in to the new scheme. Assuming approximately this number in future years we can estimate the likely time costs of submitting a sales note electronically. To understand the additional time saving to industry from carrying this out electronically we need to compare it to the estimated cost of submitting sales notes in paper form.

We have assumed that the time taken to submit a paper sales note is on average 15 minutes per sales note.

Using the Standard Cost Model we can calculate the cost of completing this task:

Administrative Cost = Number of sales notes submitted x time taken to submit x hourly wage rate

Therefore, Administrative Cost = $\pounds 208,380$

² Taken from the Annual Survey of Hours and Earnings 2008 by the Office for National Statistics: Gross Hourly Pay for Service Activities Incidental to Fishing

³ To include 30% overheads

⁴ Taken from Defra ready reckoner for London rate EO.

Where:

Number of sales notes submitted = 69,000

Time taken to submit = 0.25 hours

Hourly Wage = £9.29⁵ x 1.3⁶ = £12.08

In addition there may be paper, printing and postage costs associated with submitting notes in paper form.

It is also assumed when looking at the cost benefit that all businesses have existing IT equipment and internet connections as part of normal business practice but if this is not the case, there may be additional one-off costs for purchase of suitable equipment etc to allow the business to comply with the requirement to record and submit sales notes for all purchases of first sale fish.

Once the system is up and running, and firms are familiar with the procedure, we have assumed that time and stationary/postage costs will be halved. We therefore estimate a saving of £104,190 annually. It is anticipated that there will be a transition period of approximately 12 months before all buyers and sellers are fully utilising the new systems.

The introduction of e-sales notes will bring with it some savings in direct data input by the MFA. This is estimated to be approximately 3.6 staff years annually at AO grade. This is based on the estimated administrative costs as set out below (£84,588) divided by the national AO costs (£23,503) as set out in the ready reckoner.

Using the calculation below we estimate the cost to the MFA of completing this task:

Administrative Cost = Number of sales notes submitted x time taken to submit x AO hourly rate

Therefore, Administrative Cost = £84,588

Where:

Number of sales notes submitted = 69,000

Time taken to submit 5 minutes = 0.083 hours

Hourly Wage = £14.77

This will allow their time to be freed up to perform other fisheries duties as the keying effort/burden reduces from automatic transmission of data by the registered buyers and sellers. It is anticipated that these savings will not be fully realised until 12 months after the introduction of E-sales notes. Therefore, these savings are not included until 1 year after introduction of the regulation in the summary sheet.

It will ensure proper application of the Commission Regulation and thereby avoid the risk of infraction proceedings.

This option sits within the Fisheries Simplification plan for both Industry and Fisheries Administrations.

Conclusions

⁵ Taken from the Annual Survey of Hours and Earnings 2008 by the Office for National Statistics: Gross Hourly Pay for Service Activities Incidental to Fishing

⁶ To include 30% overheads

Implementing the proposal will provide the opportunity for stakeholders to reduce their administrative burdens currently incurred by submitting paper sales notes within 48 hours of completion of sale. There is also anticipated to be a saving for the MFA in time taken to process sales notes. These savings combined with meeting the requirements to apply the Commission regulation indicate that Option 2 is more beneficial. Therefore, this is our preferred option.

6. Enforcement, Sanctions and Monitoring

Enforcement of these measures will be undertaken by the British Sea Fisheries Officers operating under and behalf of the Marine and Fisheries Agency in England. The enforcement of these EU Regulations is done as part of wider routine enforcement costs. Therefore there are no specific costs attached.

7. Implementation and Delivery Plan

The requirements of Council Regulation 1966/2006 to electronically recording and reporting transmission of sales notes for those registered buyers and sellers of first sale fish with an annual turnover in fish products exceeding 400, 000 euros came into force on 1 January 2009.

Guidelines will be produced for Inspectors and required training will be provided. Plain English guidance notes have been prepared for the registered buyers and sellers setting out the requirements of this Regulation and how to use their chosen means of recording and submitting sales note data. This will be circulated three months before the implementation of this Regulation.

8. Post Implementation Review

Defra will carry out a review of the scheme within three years of the scheme being implemented to ensure it is operating in a reasonable and proportionate manner.

Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.

Type of testing undertaken	<i>Results in Evidence Base?</i>	<i>Results annexed?</i>
Competition Assessment	Yes	Yes
Small Firms Impact Test	Yes	Yes
Legal Aid	Yes	Yes
Sustainable Development	Yes	Yes
Carbon Assessment	Yes	Yes
Other Environment	Yes	Yes
Health Impact Assessment	Yes	Yes
Race Equality	Yes	Yes
Disability Equality	Yes	Yes
Gender Equality	Yes	Yes
Human Rights	Yes	Yes
Rural Proofing	Yes	Yes

Impact Tests

Small firms Impact Assessment - In England there are currently 659 Registered Buyers and Sellers. Of those 58 are above the European Commission threshold (€400,000 per annum) and a further 22 have opted into the scheme on a voluntary basis.

Virtually all businesses in the fish selling industry are classified as small or medium size enterprises (SMEs). The vast majority are micro businesses (less than 10 employees). Those businesses whose turnover in first sale fish is below €400,000 (approx £360K) per annum are not covered by the requirements to record and report sale or purchases of fish to Authorities. However, due to the possible reduction in administrative burden from using this system, all registered buyers and sellers have been invited to opt into the scheme on a voluntary basis. There have been no additional costs highlighted for small business.

Competition Assessment - Implementation of the electronic recording and reporting aspects for take over declarations and sales notes data will result in a reduction in administrative burden for Industry and will simplify the current process for all involved. The competition assessment filter was applied to these Regulation, which apply equally to all businesses and no competition concerns were identified.

Legal Aid – this proposal does not create new criminal sanctions or civil penalties.

Sustainable Development – The proposal to implement electronic sales notes conforms to the five principles of sustainable development to which the Government is committed.

Carbon and other environment – The options will have no significant effect on carbon emissions.

Health Impact – The proposal has no significant impact on human health by virtue of its effects on the wider determinants of human health; lifestyle related variables; or demand on health and social care services.

Race/Disability/Gender Equality – The implementation of electronic sales notes will be available to all registered buyers and sellers of first sale fish. There are no limitations on the grounds of race, disability or gender.

Human Rights – The Proposal is consistent with the Human Rights Act 1998.

Rural Proofing – Rural proofing is a commitment by Government to ensure domestic policies take account of rural circumstances and needs. The majority of those employed in the fishing and support services are based in coastal communities in rural areas. The implementation of electronic sales note is designed to ensure the greater long term certainty about access to quota, which is a positive effect for the fishing and support services.